Supreme Court, U.S.
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NO. 87-892

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1987

JACKIE DALLIE ARRANT,

PETITIONER,

VS.

STATE OF ALABAMA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

BRIEF, ARGUMENT AND APPENDICES IN OPPOSITION TO THE PETITION

OF

DON SIEGELMAN
ATTORNEY GENERAL

AND

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL

AND

JEAN ALEXANDRA WEBB
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR RESPONDENT

ADDRESS OF COUNSEL

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QUESTIONS PRESENTED

1. Where two co-defendants are tried jointly and one testifies and the other does not, does the testifying defendant have standing to question an alleged comment on the failure of the other defendant to testify?

2. What relevance does the Constitution of Alabama have in this proceeding?

THE PARTIES

In the Circuit Court of Geneva County, Alabama the Parties were co-defendants Jackie Dallie Arrant and Joseph Ruben Jones as Defendants and the State of Alabama as Plaintiff. In the Supreme Court of Alabama Jackie Dallie Arrant was the Petitioner and the State of Alabama was the Respondent. Jackie Dallie Arrant and the State of Alabama are Petitioner and Respondent, respectively, herein. In the Alabama Court of Criminal Appeals Jackie Dallie Arrant was the Appellant and the State of Alabama was the Appellee.

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OPINIONS BELOW

The Alabama Court of Criminal Appeals affirmed the Petitioner's conviction of burglary, first degree and theft of property, first degree without a written opinion on May 12, 1987. On August 28, 1987 the Supreme Court of Alabama denied the Petitioner's petition for writ of certiorari. Both decisions were unreported.

Copies of both decisions are attached to the petition.

JURISDICTION

The Petitioner has invoked this Honorable Court's jurisdiction under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner raises an alleged claim under the Fifth Amendment to the Constitution of the United States in

which he argues that his right against self-incrimination was violated when the prosecutor allegedly made a comment on his co-defendant's failure to testify. The Petitioner also raises an alleged claim under Article 1, Section 6 of the Constitution of Alabama in which he similarly argues that his right against self-incrimination has been violated.

STATUTORY PROVISIONS INVOLVED

Petitioner Jackie Dallie Arrant was convicted of burglary, first degree and theft of property, first degree under Sections 13A-7-5 and 13A-8-3, Code of Alabama (1975). (Appendices A and B).

STATEMENT OF THE CASE AND THE FACTS

A.

THE PROCEDURAL HISTORY OF THIS CASE

1.

AT THE TRIAL LEVEL

The Petitioner, Jackie Dallie Arrant, and his co-defendant, Joseph Ruben Jones, were indicted by the Grand Jury of Geneva County, Alabama, on January 17, 1985 on charges of burglary, first degree and theft of property, first degree. (TR. 6). The cases against the Petitioner and his co-defendant were consolidated for trial and they were tried jointly on September 25, 1985 in the Circuit Court of Geneva County, Alabama. (TR. 92).

The Petitioner and his co-defendant were found guilty as charged in the indictment on September 25, 1985. (TR. 71). On September 27,

1985 the Petitioner was sentenced in the following manner:

> Jackie Dallie Arrant - sentenced to six (6) years in the State penitentiary on Count I and to ten (10) years and one (1) day in the State penitentiary on Count II as punishment for his crime. These sentences shall run concurrently with each other. Defendant is ordered to pay $1,800.00 restitution plus court costs.

(TR. 22).

The Petitioner, Jackie Dallie Arrant, filed a motion for a new trial on October 1, 1985 and such motion was denied by the Circuit Court of Geneva County, Alabama on November 1, 1985. (TR. 24, 32). However, the Petitioner's application for probation was granted as follows: "The Court sentences the defendant to three (3) years in the state penitentiary and grants probation for the remaining seven (7) years and one(1) day under the terms and condition

of order of probation this day imposed." (TR. 33). Notice of Appeal to the Alabama Court of Criminal Appeals was filed on behalf of Petitioner on December 11, 1985. (TR. 35).

2.

APPEAL

On direct appeal to the Alabama Court of Criminal Appeals and on application for rehearing in that court the petitioner presented the following issues:

> I. Whether the trial court committed reversible error in overruling Appellant Arrant's motion for a mistrial based on an allegedly improper remark made by the prosecution in its closing argument regarding co-defendant Joseph Ruben Jones' failure to testify?
>
> II. Whether the verdict and judgment of the trial court was void as it was based on a defective indictment?

III. Whether the trial erred in overruling Appellant Arrant's motion to exclude the evidence and in allowing a suit of clothing to be admitted into evidence as State's Exhibit 1?

IV. Whether the trial court erred in sustaining a motion to exclude the testimony of J. W. Griffith by the prosecution?

V. Whether the State of Alabama failed to meet the requirements of Section 12-21-222, Code of Alabama (1975) regarding an accomplice's testimony on a felony conviction?

The Alabama Court of Criminal Appeals affirmed the Petitioner's conviction on May 12, 1987, without written opinion. On June 9, 1987 the Alabama Court of Criminal Appeals overruled the Petitioner's application for rehearing, without written opinion.

CERTIORARI IN THE ALABAMA SUPREME COURT

The issues and brief presented to the Alabama Supreme Court were identical to the issues and brief argued on direct appeal and rehearing. The Alabama Supreme Court denied the Petitioner's petition for writ of certiorari on August 28, 1987 and this appeal follows.

SUMMARY OF THE ARGUMENT

1. The privilege against self-incrimination as guaranteed by the Fifth Amendment is a purely personal right which cannot be vicariously asserted. Bellis v. United States, 417 U.S. 85, 87, 40 L.Ed.2d 678, 683, 94 S.Ct. 2179 (1974); Couch v. United States, 409 U.S. 322, 327-328, 34 L.Ed.2d 548, 93 S.Ct. 611 (1973).

Therefore, the Petitioner has no standing to assert the Fifth Amendment rights of his co-defendant and thus the petition for writ of certiorari is due to be denied.

2. The Petitioner also argues that his right against self-incrimination as guaranteed by the Alabama Constitution was denied. This is purely a matter of state law and is therefore not an issue reviewable by this Court. International Longshoremen's Association v. Davis, 476 U.S. ___, 90 L.Ed.2d 389, 398, 106 S.Ct. ___ (1986); Manhattan Life Insurance Company v. Cohen, 234 U.S. 123, 136, 58 L.Ed. 1245 (1914). Therefore, for the reasons herein cited the writ is due to be denied.

ARGUMENT

I.

THE PETITIONER HAS NO STANDING TO QUESTION AN ALLEGED COMMENT ON THE FAILURE OF HIS CO-DEFENDANT TO TESTIFY AS THERE HAS BEEN NO VIOLATION OF PETITIONER'S FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION.

The Petitioner argues that his Fifth Amendment right against self-incrimination was violated when the prosecution allegedly made a comment in closing argument regarding his co-defendant Jones' failure to testify. It is unclear from the record exactly what the prosecutor said in closing argument that Petitioner finds objectionable. Defense counsel argued in the motion for new trial that the comment was "You only heard the testimony of one defendant." (The Petitioner, Jackie Dallie Arrant, testified at trial in his own behalf;

his co-defendant did not). The prosecution recalled the comment as being "that only one witness took the stand for the defense".

The Petitioner couches his argument in terms which suggest that his Fifth Amendment right against self-incrimination was violated by this remark by the prosecution regarding his co-defendant's failure to testify. However, since the Petitioner testified and his co-defendant did not, clearly the Petitioner is attempting to assert his co-defendant's Fifth Amendment rights.

It has been well established by this Court that the privilege against self-incrimination afforded by the United States Constitution, Fifth Amendment, is purely personal to the individual and that an individual can

not assert the Fifth Amendment rights of another. See, e.g., Rakas v. Illinois, 439 U.S. 128, 140, 58 L.Ed.2d 387, 399, 99 S.Ct. 421 (1978); United States v. Nobles, 422 U.S. 225, 233, 45 L.Ed.2d 141, 150, 95 S.Ct. 2160 (1975); Bellis v. United States, 417 U.S. 85, 87, 40 L.Ed.2d 678, 683, 94 S.Ct. 2179 (1974); Couch v. United States, 409 U.S. 322, 327-328, 34 L.Ed.2d 548, 93 S.Ct. 611 (1973); United States v. White, 322 U.S. 694, 698-699, 88 L.Ed. 1542, 64 S.Ct. 1248 (1944); McAlister v. Henkel, 201 U.S. 90, 91, 50 L.Ed. 671, 672 (1905).

In the instant case, Petitioner seeks to raise claims relating to the Fifth Amendment rights of his co-defendant. Under constitutional law, "a litigant has standing to seek redress for injuries done to him, but may not seek redress for injuries done to

others". Laird v. Tatum, 408 U.S. 1, 14, 33 L.Ed.2d 154, 164, 92 S.Ct. 2318 (1972). See, e.g., Broaderick v. Oklahoma, 413 U.S. 601, 610, 37 L.Ed.2d 830, 839, 93 S.Ct. 2908 (1973); McGowan v. Maryland, 366 U.S. 420, 429-430, 6 L.Ed.2d 393, 401, 81 S.Ct. 1101 (1961).

The Petitioner seeks not redress for violations of his own constitutional rights; rather he seeks redress for injuries allegedly suffered by his co-defendant Joseph Ruben Jones. Therefore, as the Petitioner has no standing in constitutional law to assert the Fifth Amendment rights of his co-defendant the petition for certiorari is due to be denied.

II.

In his brief to this Honorable Court, the Petitioner also argues that his right against self-incrimination as guaranteed by the Alabama Constitution was violated. This is not an issue properly brought before the United States Supreme Court as it is a matter of state interpretation of state law. (The Alabama Constitution). The United States Supreme Court has no authority to review state determinations of purely state law. International Longshoremen's Association v. Davis, 476 U.S. ___, 90 L.Ed.2d 389, 398, 106 S.Ct. ___ (1986); Manhattan Life Insurance Company v. Cohen, 234 U.S. 123, 136, 58 L.Ed. 1245 (1914).

Since the Alabama court's determination of the state constitution is a matter of state law this issue is

not one reviewable by this Court and the petition for writ of certiorari is due to be denied.

CONCLUSION

In conclusion, the Respondent submits the following:

1. The Petitioner has no standing to assert his co-defendant's Fifth Amendment right against self-incrimination.

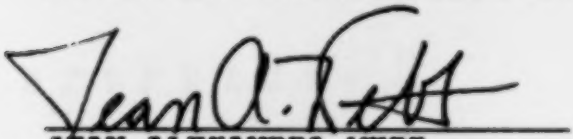
2. The issue involving the constitution of Alabama is solely one of state law and therefore not within the jurisdiction of this Court.

Therefore, the Respondent prays that the writ will be denied.

Respectfully submitted,

DON SIEGELMAN
ATTORNEY GENERAL
BY-

JOSEPH G. L. MARSTON, III
ASSISTANT ATTORNEY GENERAL



JEAN ALEXANDRA WEBB
ASSISTANT ATTORNEY GENERAL

APPENDICES

§13A-8-3. Theft of property in the first degree.

(a) The theft of property which exceeds $1,000.00 in value, or property of any value taken from the person of another, constitutes theft of property in the first degree.

(b) The theft of a motor vehicle, regardless of its value, constitutes theft of property in the first degree.

(c) Theft of property in the first degree is a Class B felony.

§13A-7-5. Burglary in the first degree.

(a) A person commits the crime of burglary in the first degree if he knowingly and unlawfully enters or remains unlawfully in a dwelling with intent to commit a crime therein, and, if, in effecting entry or while in dwelling or in immediate flight therefrom, he or another participant in the crime:

(1) Is armed with explosives or a deadly weapon; or

(2) Causes physical injury to another person who is not a participant in the crime; or

(3) Uses or threatens the immediate use of a dangerous instrument.

(b) Burglary in the first degree is a Class A felony.

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, an Assistant Attorney General of Alabama, do hereby certify that I am a member of the Bar of the Supreme Court of the United States and, as one of the Attorneys for the Respondent, I hereby certify on this _____ day of February, 1988, I did serve the requisite number of copies of the foregoing on the Attorney for Jackie Dallie Arrant, Petitioner, by mailing the same to said Attorney, first-class postage prepaid and addressed as follows:

Honorable J. E. Sawyer
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